

*United States Court of Appeals
for the Second Circuit*



APPENDIX

74-1303

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

No. 74-1303

UNITED STATES OF AMERICA

Plaintiff - Appellee

vs.

JOHN DOE
(Emil Sapere, James Consiglio,
Michael O'Brien, Michael Charizio,
and Edwina Dawidowicz)

Defendants - Appellants

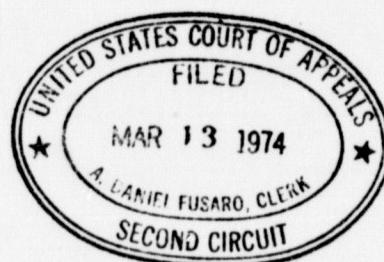
ON APPEAL FROM A JUDGMENT AND ORDER OF THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

APPELLANTS' JOINT APPENDIX

William P. Murray, Esquire
62 LaSalle Road
West Hartford, Connecticut 06107
203-521-7500

W. Paul Flynn, Esquire
132 Temple Street
New Haven, Connecticut
203-772-1470

Joseph E. Fazzano, Esquire
100 Constitution Plaza
Hartford, Connecticut
203-525-0843



VOL. I

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	ii
Subpoena To Testify Before Grand Jury (Emil Sapere)	A-1
Motion of Paul E. Coffey, Special Attorney, United States Department of Justice, to Compel Voice Exemplars	A-2
Affidavit of Paul E. Coffey, Special Attorney, United States Department of Justice	A-3
Motion for Discovery and Inspection	A-4 A-5
Subpoena Duces Tecum to Testify (Special Agent Dewey Santacroce)	A-6
Subpoena Duces Tecum to Testify (Special Agent Richard Ludwig)	A-7
Report of Special Agent Richard Ludwig Re: Intercepted Telephone Calls of Emil Sapere	A-8 -15
Ruling on Pending Motions	A-16 -20
Notice of Appeal	A-21
Transcript of October 10, 1973 hearing before The Honorable T. Emmet Clarie, U. S. D. J.	A-22-60
Transcript of November 12, 1973 hearing before The Honorable T. Emmet Clarie, U. S. D. J.	A-61 -114
Transcript of February 26, 1974 hearing before The Honorable T. Emmet Clarie, U. S. D. J.	A-115 -143
18 United States Code, Section 2515	A-144
18 United States Code, Section 3504	A-145

DOCKET ENTRIES - Emil Sapere

73.	
1-6	1. Motion To Compel Voice Exemplars & Memorandum in Support of Motion filed.
0-15	2. APPEARANCE of Eagan & Murray entered for Sapere.
1-12	HEARING ON PETITION for Voice Exemplars (re: Grand Jury Proceedings.) Motion for Discovery & Inspection filed. Notice of Motion for Discovery and Inspection filed. Argument by counsel. Briefs to be filed by 11-19-73. Gov't re=
	spond by 11-23-73.
1-19	3. BRIEF OF WITNESSES, E. SAPERE & E. VERDONE JR. filed.
9-74	Ruling on Pending Motion filed. Clarie, J.m Copy mailed to counsel of record.
-26	HEARING on witness before Grand Jury refusing to give voice exemplars. Atty Murray stipulates that ORDER has been given and refused. Court finds Sapere in Civil Contempt and committed for 90 days. Stayed until 3/4/74 at which time the Court of Appeals will hear matter. Atty Motinn that filed be unsealed and tapes be made availabe, DEnied. Exhibits A, B & C filed, subpoenas. Released on his own recognizance.
2-27	Transcript of Hearing held on 2-26 filed. Sperber, R.
2-28	Notice of Appeal filed.
-1	Complete copies of file handed to Mr. Wm Murray for USCA.
-4*	4. Acknowledgement of Counsel filed by Mr. Murray.
-11	Transcripts of Proceedings held on 10/10/73 and 11/12/73 filed. Sperber, R.
-7	File mailed to New Haven, for USCA.
-11	Transcripts of Proceedings held on 10/10/73 and 11/12/73 filed. Sperber R.

DOCKET ENTRIES - James Consiglio

1973	
11-6	1. Motion To Compel Voice Exemplars & Memorandum in Support Motion filed.
11-12	HEARING on Petition for Voice Exemplars. (re: Grand Jury Proceedings) Con't until Grand Jury reconvenes. Affidavit of V. Consiglio filed. Response to Motion to Compel Voice Exemplar filed. Argument by counsel. Briefs to be filed by 11-19. Gov't respond by 11-23-73.
2-19-74	Ruling on Pending Motions filed . Clarie, J.m Copy mailed to counsel of record.
2-26	HEARING on witness before Grand Jury refusing to give voice exemplares. Attorney Flynn stipulates that ORDER has been given, and witness has refused. Court finds Consiglio in Civil Contempt, and committed for 90 days, to be released at any time to give exemplars. Stay until 3-4-74 at 10:00 a.m. at which time the Court of Appeals will hear matter. Def. released on won recognizance.
2-27	Transcript of Hearing held on 2-26 filed. Sperber, R.
2-28	Notice of Appeal filed.
3-1	Complete copies of filed handed to Atty Murray for USCA.
3-11	Transcript of Proceedings held on 11/12/73 filed. Sperber, R.
"	Transcript of Proceedings held on 10-10-73 filed. Sperber , R.
3-7	File mailed to New Haven for USCA.

ONLY COPY AVAILABLE

DOCKET ENTRIES - Michael M. Charizio

1973	
11-6	1. Motion to Compel Voice Exemplars & Memorandum in Support of Motion filed.
11-12	HEARING on Petition for Voice Exemplars. (re: grand jury proceedings.)
2-19-74	Argument by counsel. Briefs to be filed by 11-19-73. Gov't respond by 11-23-73.
	Ruling on Pending Motion filed. Clarie, J. m Copy mailed to counsel of record.
2-26	HEARING on refusal to give voice exemplars after ORDER (ClarieJ.) Court finds Mr. Chiarizio in civil contempt and committed for 90 days. Stayed until 3/4/74 at which time the Court of Appeals will hear matter.
2-27	Transcript of Hearing held on 2-26 filed. Sperber, R.
2-28	Notice of Appeal filed.
3-1	Complete copies of file handed to Atty Murray for USCA.
3-7	File mailed to New Haven for USCA.
3-11	Transcripts of Proceedings held on 10/10/73 and 11/12/73 filed. Sperber, R.

DOCKET ENTRIES - Edwina Dawidowicz

1973	
11-6	1 Motion to Compel Voice Exemplars & Memorandum in support of motion filed.
11-12	HEARING on Petition for Voice Exemplars. (re: Grand Jury Proceedings)
2-19-74	Argument by counsel. Briefs to be filed by 11-19-73. Gov't respond by 11-23-73.
	Ruling on Pending Motion filed. Clarie, J. m Copy mailed to counsel of record.
2-26	HEARING on refusal to give voice exemplars after ORDER, (ClarieJ) Court finds Ms. Dawidowicz in civil contempt and committed for 90 days. Stayed until 3/4/74 at which time the Court of Appeals will hear matter.
2-27	Transcript of Hearing held on 2-26 filed. Sperber, R.
2-28	Notice of Appeal filed.
3-1	Complete copies of file handed to Atty Murray for USCA.
3-7	File mailed to New Haven for USCA.
3-11	Transcripts of Proceedings held on 10/10/73 and 11/12/73 filed. Sperber, R.

DOCKET ENTRIES - Michael O'Brien

1973	
11-6	1. Motion to Compel Voice Exemplars & Memorandum in Support of Motion filed.
11-12	HEARING on Petition for Voice Exemplars. (re: Grand Jury Proceedings)
2-19-74	Arguments by counsel. Briefs to be filed by 11-19-73. Gov't respond by 11-23-73. Ruling on Pending Motion filed. Clarie, J. m Copy mailed to counsel of record.
2-26	HEARING on refusal to give voice exemplars after ORDER (Clarie J.) Court finds Mr. O'Brien in civil contempt and committed for 90 days. Stayed until 3/4/74 at which time the Court of Appeals will hear matter.
2-27	Transcript of Hearing held on 2-26 filed. Sperber, R.
2-28	Notice of Appeal filed.
3-1	Complete copies of filed handed to Atty Murray for USCA.
3-7	File mailed to New Haven for USCA.
3-11	Transcripts of Proceedings held on 10/10/73 and 11/12/73 filed. Sperber, R.

ws

7

United States District Court
FOR THE

DISTRICT OF CONNECTICUT

To: United States
FBI - Stamford Field
Bethel, Connecticut

You are hereby commanded to appear in the United States District Court for the District of Connecticut at 120 Main St., Stamford, Conn., in the city of Stamford, Conn., on the 15th day of October, 1973, at 10 o'clock A.M. to testify before the Grand Jury and bring with you

This subpoena is issued on application of the United States of America.

Clerk

Date: 10/17/73

By:

Deputy Clerk

I warrant that the above witness will appear and testify before the Grand Jury and will not be compelled to disclose any privilege or豁免 (privilege) which he may have.

RECEIVED

Received the subpoena at _____
and in _____ at _____ I served it on _____
with personal delivery to _____ and telephone to _____ the foregoing date in advance and in sufficient time
for the witness to make arrangements to appear.

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: A WITNESS BEFORE THE GRAND JURY
MOTION TO COMPEL VOICE EXEMPLARS

Now comes the United States of America, by and through its attorney, Paul E. Coffey, Special Attorney, United States Department of Justice, and moves this Court for an Order compelling Emil Sapere to furnish voice exemplars to the Special Grand Jury sitting at Hartford in the District of Connecticut. This motion is based upon the attached Affidavit of Paul E. Coffey, Memorandum in Support of Motion to Compel Voice Exemplars, and any oral documentary evidence presented at any hearing on this motion.

Respectfully submitted,

Paul E. Coffey, Special Attorney
United States Department of Justice

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

A F F I D A V I T

Paul E. Coffey, being duly sworn, deposes and says:

(1) I am a Special Attorney of the United States Department of Justice assigned to the District of Connecticut.

(2) As part of my official duties, I am conducting proceedings before the Special Grand Jury in the District of Connecticut inquiring into possible violations of Section 1955 of Title 18, United States Code (illegal gambling business).

(3) The aforementioned inquiry is predicated, in part, upon lawfully intercepted wire communications.

(4) The witness, Emil Sapere, is under subpoena to appear before the Special Grand Jury.

(5) The Grand Jury intends to ask the witness to read a paragraph relating to the Declaration of Independence.

(6) The voice exemplars are essential and necessary to the grand jury investigation and are to be used as a standard of comparison in order to determine whether or not the witness is the person whose voice was intercepted in court authorized wire interceptions between February 23, 1973 and May 14, 1973.

(7) The witness, Emil Sapere, is currently under indictment in this Court in Criminal No. H-263, United States v. Dominic Sapere, et. al. This application is not issued for the purpose of securing evidence of the offenses (18 U.S.C. 1955, 371) charged in that indictment and no evidence secured pursuant to this voice exemplar will be used at the trial of the aforementioned indictment. The wire interceptions relating to these voice exemplars occurred subsequent to the indictment above. No intercepted conversations of the accused related to the preparation or defense strategy of the indictment pending against him nor revealed any confidential conversations between the witness and his attorney.

PAUL E. COFFEY - SPECIAL ATTORNEY
UNITED STATES DEPARTMENT OF
JUSTICE

SWORN AND SUBSCRIBED BEFORE ME THIS ____ DAY OF
_____, 1973 AT HARTFORD, CONNECTICUT.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : :

VS. : CRIMINAL NO. H-64

EMIL SAPERE & 33 OTHER CITIZENS : NOVEMBER 8, 1973

MOTION FOR DISCOVERY AND INSPECTION

Now comes Emil Sapere, a citizen of the United States and a resident of Wethersfield, Connecticut, who, pursuant to the Constitution of the United States, particularly Amendments I, IV, V, VI, IX, and 18 U.S.C.A. sections 2518(8)(d), and 3504(a)(b), Title III of the Omnibus Crime Control and Safe Streets Act of 1968, moves this Honorable Court for an order herein requiring the United States to make available to him for inspection and copying:

1. Any and all documentary evidence which the United States intends to introduce in support of its recently filed motion to take voice exemplars.
2. All intercepted conversations in the possession of the government together with agents' recordings, logs and transcripts of such intercepted conversations pertinent hereto.
3. Applications to this court and orders of this court for the said wire interceptions pertinent hereto.

4. The record of court proceedings relative to said wire interceptions pertinent hereto.

Your movant represents that he is in need of the above materials in order to determine whether his constitutional and statutory rights have been infringed by the United States and to determine the underlying legal and constitutional appropriateness of the proceedings herein brought on by the United States.

EMIL SAPERE

By _____

William P. Murray
EAGAN, JACKSON, O'KEEFE & MURRAY
62 LaSalle Road
West Hartford, Connecticut 06107
521-7500

CERTIFICATION

This is to certify that I have this 8th day of November, 1973 forwarded a copy of the foregoing Motion to Paul E. Coffey, Special Attorney, 450 Main Street, Hartford, Connecticut.

William P. Murray

CIVIL SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

DOCKET NO.

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

CIVIL ACTION FILE NO.

vs.

No. H-64

EMIL SAPERE & 33 OTHER CITIZENS

To Special Agent Dewey Santacroce
FBI
450 Main Street
Hartford, Connecticut

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the
District of Connecticut
at 450 Main Street in the city of Hartford on the 12th day of November 1973 at 2 o'clock p.m. to
testify under oath

In the above entitled action and bring with you

1. Any and all tape recordings of intercepted conversations of Emil Sapere of Wethersfield, Connecticut in your possession and/or that of the FBI together with agents' logs and transcripts pertinent to such conversations.
2. Any and all applications or copies of same made by you or other members of the FBI to courts pertinent to the conversations specified in #1 above.
3. Copies of any court orders in your possession pertinent to the conversations specified in #1 above.

November 8, 1973.

Attn: /s/ Emil Sapere
62 Litchfield Road
West Hartford, Connecticut

RECEIVED
U.S. DISTRICT COURT
CLERK'S OFFICE
NOV 10 1973
Dewey C. Egan

RECORDED AND INDEXED

For Plaintiff's attorney at:

cm

and for the defendant at:

For Plaintiff's attorney and his/her office for one day's attendance and the mileage
for the trip.

ONLY COPY AVAILABLE

Dated:

Civil Subpoena Dated: October 20, 1973

RECEIVED

DISTRICT OF CONNECTICUT

CIVIL ACTION FILE NO.

UNITED STATES OF AMERICA

v.
EMIL SAINTE AND 33 OTHER CITIZENS

No. H-64

To Special Agent Richard Ludwig
FBI
450 Main Street
Hartford, Connecticut

YOU ARE HEREBY COMMAUNDED to appear in the United States District Court for the
District of Connecticut
at 450 Main Street In the City of Hartford on
the 12th day of November 1973 at 2 o'clock p.m. to
testify and/or

In the above entitled action and doing with you

1. Any and all tape recordings of intercepted conversations of Emil Sainve of Wethersfield, Connecticut in your possession and/or that of the FBI together with agents' logs and transcripts pertinent to such conversations.
2. Any and all applications or copies of same made by you or other members of the FBI to courts pertinent to the conversations specified in #1 above.
3. Copies of any court orders in your possession pertinent to the conversations specified in #1 above.

November 6, 1973.

Attest: *John C. Madigan*
John C. Madigan
Deputy Clerk
501-7500

John C. Madigan
John C. Madigan
Deputy Clerk

RECEIVED - DEPT. OF JUSTICE

on

RECEIVED - DEPT. OF JUSTICE
RECEIVED - DEPT. OF JUSTICE
RECEIVED - DEPT. OF JUSTICE
RECEIVED - DEPT. OF JUSTICE

ONLY COPY AVAILABLE

FEDERAL BUREAU OF INVESTIGATION

Date of transcription August 22, 1972

Set forth are intercepted conversations in which EMIL SAPERE is a party in the conversation. The conversations are identified by the symbol number assigned to the telephone in question, the date and time the interception occurred, and whether the call was incoming (IC) to or outgoing (OG) from the telephone in question; in addition, for each conversation EMIL SAPERE's portion of the conversation is keyed to the written transcript of the conversation by the designations of P-1, P-2, P-3, etc.

In each of the conversations to follow, the voice of the designated party was identical and was identical to the voice of EMIL SAPERE with whom Special Agent LUDWIG engaged in personal conversation at the time of SAPERE's arrest on gambling charges on May 5, 1972.

USDC/CT #9, 10/13/71

11:32 a.m.	IC	P-2
7:13 p.m.	IC	P-2
8:07 p.m.	IC	P-2
8:15 p.m.	OG	PP-1

USDC/CT #9, 10/14/71

10:56 a.m.	IC	P-2
11:23 a.m.	IC	P-2
12:48 p.m.	IC	P-2
1:01 p.m.	OG	P-1

USDC/CT #9, 10/15/71

12:13 p.m.	IC	P-2
6:31 p.m.	IC	P-2
3:04 p.m.	IC	P-2

USDC/CT #9, 10/16/71

11:47 a.m.	IC	P-2
12:24 p.m.	IC	P-2
1:03 p.m.	OG	P-2
1:09 p.m.	IC	P-2
1:35 p.m.	IC	P-2
2:01 p.m.	IC	P-2
4:02 p.m.	OG	P-1
4:22 p.m.	IC	P-2
4:30 p.m.	OG	P-1
7:34 p.m.	OG	P-1
7:56 p.m.	OG	P-1
8:00 p.m.	OG	P-1

USDC/CT #9, 10/17/71

11:13 a.m.	IC	P-1
2:36 p.m.	OG	P-1
2:45 p.m.	IC	P-2
3:05 p.m.	IC	P-2

Interviewed on 6/5/72-8/15/72 at Hartford, Connecticut File # NH 182-7

by SA RICHARD D. LUDWIG: eam

39

Date dictated

8/18/72

MM 103-7

HOL:cm

2

UEDC/CT #10, 10/10/71

8:03 p.m. CG P-1
8:10 p.m. IC P-2
8:15 p.m. - 8:17 p.m. IC P-2
8:07 p.m. IC P-2
8:30 p.m. IC P-2
9:00 p.m. CG P-3

12:13 p.m. IC P-1
12:24 p.m. CG P-2
12:25 p.m. CG P-2
12:26 p.m. CG P-2
1:01 p.m. IC P-1
1:11 p.m. IC P-1
1:16 p.m. IC P-2
1:22 p.m. IC P-1
1:25 p.m. IC P-1
1:30 p.m. CG P-2
1:35 p.m. CG P-2
2:04 p.m. CG P-2
2:09 p.m. OG P-2
2:14 p.m. CG P-2
2:37 p.m. OG P-2
7:13 p.m. IC P-2

UEDC/CT #12, 11/12/71

8:10 p.m. IC P-1
8:20 p.m. IC P-1
8:25 p.m. IC P-1
8:30 p.m. IC P-2
8:40 p.m. IC P-2
8:44 p.m. IC P-1
8:50 p.m. IC P-1
7:35 p.m. IC P-2
7:38 p.m. IC P-2
8:04 p.m. OG P-2
8:07 p.m. CG P-2

UEDC/CT #12, 11/14/71

10:15 a.m. CG P-2
10:30 a.m. IC P-1
11:24 a.m. CG P-2
11:26 a.m. CG P-2
11:29 a.m. OG P-2
11:31 a.m. CG P-2
11:33 a.m. CG P-2
11:35 a.m. IC P-1
11:37 a.m. IC P-1
11:40 a.m. CG P-2
11:42 a.m. OG P-2
11:45 a.m. IC P-2
11:43 a.m. IC P-2
11:47 a.m. IC P-1
11:51 a.m. IC P-1
12:03 p.m. IC P-1
12:06 p.m. IC P-2
12:16 p.m. IC P-1
12:22 p.m. OG P-2
12:34 p.m. CG P-2
12:39 p.m. IC P-1

UEDC/CT #12, 11/13/71

9:30 a.m. IC P-1
10:00 a.m. CG P-2
11:10 a.m. CG P-2
11:31 a.m. OG P-2
11:33 a.m. CG P-2
11:34 a.m. CG P-2
11:35 a.m. OG P-2
11:30 a.m. CG P-2
11:33 a.m. CG P-2
11:37 a.m. OG P-1
11:38 a.m. IC P-1
11:53 a.m. IC P-1
12:00 noon IC P-1
12:04 p.m. IC P-1

ONLY COPY AVAILABLE

ME 102-7
EDL Scan
3

12:45	p.m.	HC	P-1
12:50	p.m.	CG	P-2
12:55	p.m.	CG	P-2
12:59	p.m.	CG	P-1
1:00	p.m.	CG	P-1
1:10	p.m.	CG	P-2
1:17	p.m.	CG	P-2
1:20	p.m.	CG	P-2
1:23	p.m.	CG	P-1
1:31	p.m.	CG	P-1
1:34	p.m.	CG	P-2
1:35	p.m.	CG	P-1
1:40	p.m.	CG	P-2
1:50	p.m.	HC	P-1
2:07	p.m.	CG	P-2
2:11	p.m.	CG	P-1
2:16	p.m.	CG	P-2
2:17	p.m.	CG	P-1
2:27	p.m.	CG	P-1
2:30	p.m.	CG	P-1
2:42	p.m.	CG	P-2
2:46	p.m.	CG	P-1
2:47	p.m.	CG	P-1
2:53	p.m.	CG	P-2
2:59	p.m.	CG	P-1
3:00	p.m.	CG	P-2
3:10	p.m.	CG	P-1
3:14	p.m.	CG	P-2
3:15	p.m.	CG	P-2
3:19	p.m.	CG	P-2
3:21	p.m.	CG	P-2
3:30	p.m.	CG	P-1
4:13	p.m.	CG	P-1
4:20	p.m.	CG	P-2
4:22	p.m.	CG	P-2
4:23	p.m.	CG	P-2
4:25	p.m.	CG	P-2
4:27	p.m.	CG	P-2

USDC/CT #12, 22/03/21

9:14 a.m.	IC	P-1
9:29 a.m.	IC	P-1
9:33 a.m.	IC	P-1
9:40 a.m.	CG	P-2
9:41 a.m.	CG	P-2
9:43 a.m.	CG	P-2
10:16 a.m.	CG	P-2
5:50 p.m.	IC	P-1
5:57 p.m.	IC	P-1
6:01 p.m.	IC	P-1
6:04 p.m.	IC	P-1
6:12 p.m.	IC	P-1
6:17 p.m.	IC	P-1
6:19 p.m.	IC	P-1
6:24 p.m.	CG	P-2
6:26 p.m.	IC	P-1
6:27 p.m.	IC	P-1
6:31 p.m.	IC	P-1
6:55 p.m.	IC	P-1
6:57 p.m.	CG	P-2
6:58 p.m.	IC	P-1
7:02 p.m.	CG	P-2
7:13 p.m.	IC	P-1
7:24 p.m.	IC	P-1
7:26 p.m.	IC	P-1
7:27 p.m.	CG	P-2
7:28 p.m.	CG	P-2
7:41 p.m.	IC	P-2
7:45 p.m.	CG	P-2
7:51 p.m.	CG	P-2
7:55 p.m.	CG	P-2
8:08 p.m.	CG	P-2
8:43 p.m.	CG	P-2
8:49 p.m.	CG	P-2

WA 100-7
DDI:cam

7:00 p.m. CG P-2
7:05 p.m. CG P-2
7:07 p.m. CG P-2
7:09 p.m. IC P-1
7:07 p.m. OG P-2
8:00 p.m. CG P-2
9:00 p.m. CG P-2
9:11 p.m. CG P-2
9:17 p.m. IC P-2

7:12 p.m. CG P-2
7:14 p.m. IC P-1
7:16 p.m. IC P-2
7:20 p.m. IC P-1
7:50 p.m. IC P-1
7:55 p.m. IC P-1
7:57 p.m. IC P-2
7:59 p.m. IC P-1
8:07 p.m. CG P-2
8:12 p.m. IC P-1

USDC/CT #14, 11/13/71

7:20 p.m. CG P-2
7:24 p.m. CG P-2
7:53 p.m. IC P-1

USDC/CT #14, 11/13/71

10:00 a.m. IC P-1
10:40 a.m. IC P-1
11:00 a.m. IC P-2
11:03 a.m. CG P-2
11:25 a.m. IC P-1
11:29 a.m. IC P-1
11:31 a.m. IC P-1
11:55 a.m. IC P-1
11:53 a.m. IC P-1
12:00 noon IC P-1
12:03 p.m. IC P-1
12:20 p.m. IC P-1
12:24 p.m. IC P-1
12:26 p.m. IC P-1
12:27 p.m. IC P-1
12:27 p.m. IC P-1
12:33 p.m. IC P-1
12:40 p.m. IC P-1
12:53 p.m. IC P-1
12:59 p.m. IC P-1
1:00 p.m. IC P-2

USDC/CT #14, 11/13/71

7:10 p.m. IC P-1
7:15 p.m. CG P-2
7:20 p.m. IC P-1
7:24 p.m. IC P-1
7:33 p.m. OG P-1
7:31 p.m. CG P-2
7:38 p.m. IC P-1
7:43 p.m. IC P-1
7:43 p.m. IC P-1
7:43 p.m. CG P-2
7:47 p.m. IC P-1
7:50 p.m. CG P-2
7:54 p.m. IC P-1
7:59 p.m. IC P-1

NY 102-7

102-7

5

1:13 p.m.	IC	P-1
1:15 p.m.	IC	P-1
1:18 p.m.	IC	P-1
1:20 p.m.	IC	P-1
1:22 p.m.	IC	P-1
1:23 p.m.	IC	P-1
1:25 p.m.	IC	P-1
1:26 p.m.	IC	P-1
1:27 p.m.	IC	P-1
1:28 p.m.	IC	P-1
1:29 p.m.	IC	P-1
1:30 p.m.	IC	P-1
1:31 p.m.	IC	P-1
1:32 p.m.	IC	P-1
1:33 p.m.	IC	P-1
1:34 p.m.	IC	P-1
1:35 p.m.	IC	P-1
1:36 p.m.	IC	P-1
1:37 p.m.	IC	P-1
1:38 p.m.	IC	P-1
1:39 p.m.	IC	P-1
1:40 p.m.	IC	P-1
1:41 p.m.	IC	P-1
1:42 p.m.	IC	P-1
1:43 p.m.	IC	P-1
1:44 p.m.	IC	P-1
1:45 p.m.	IC	P-1
1:46 p.m.	IC	P-1
1:47 p.m.	IC	P-1
1:48 p.m.	IC	P-1
1:49 p.m.	IC	P-1
1:50 p.m.	IC	P-1
1:51 p.m.	IC	P-1
1:52 p.m.	IC	P-1
1:53 p.m.	IC	P-1
1:54 p.m.	IC	P-1
1:55 p.m.	IC	P-1
1:56 p.m.	IC	P-1
1:57 p.m.	IC	P-1
1:58 p.m.	IC	P-1
1:59 p.m.	IC	P-1
2:00 p.m.	IC	P-1
2:01 p.m.	IC	P-1
2:02 p.m.	IC	P-1
2:03 p.m.	IC	P-1
2:04 p.m.	IC	P-1
2:05 p.m.	IC	P-1
2:06 p.m.	IC	P-1
2:07 p.m.	IC	P-1
2:08 p.m.	IC	P-1
2:09 p.m.	IC	P-1
2:10 p.m.	IC	P-1
2:11 p.m.	IC	P-1
2:12 p.m.	IC	P-1
2:13 p.m.	IC	P-1
2:14 p.m.	IC	P-1
2:15 p.m.	IC	P-1
2:16 p.m.	IC	P-1
2:17 p.m.	IC	P-1
2:18 p.m.	IC	P-1
2:19 p.m.	IC	P-1
2:20 p.m.	IC	P-1
2:21 p.m.	IC	P-1
2:22 p.m.	IC	P-1
2:23 p.m.	IC	P-1
2:24 p.m.	IC	P-1
2:25 p.m.	IC	P-1
2:26 p.m.	IC	P-1
2:27 p.m.	IC	P-1
2:28 p.m.	IC	P-1
2:29 p.m.	IC	P-1
2:30 p.m.	IC	P-1
2:31 p.m.	IC	P-1
2:32 p.m.	IC	P-1
2:33 p.m.	IC	P-1
2:34 p.m.	IC	P-1
2:35 p.m.	IC	P-1
2:36 p.m.	IC	P-1
2:37 p.m.	IC	P-1
2:38 p.m.	IC	P-1
2:39 p.m.	IC	P-1
2:40 p.m.	IC	P-1
2:41 p.m.	IC	P-1
2:42 p.m.	IC	P-1
2:43 p.m.	IC	P-1
2:44 p.m.	IC	P-1
2:45 p.m.	IC	P-1
2:46 p.m.	IC	P-1
2:47 p.m.	IC	P-1
2:48 p.m.	IC	P-1
2:49 p.m.	IC	P-1
2:50 p.m.	IC	P-1
2:51 p.m.	IC	P-1
2:52 p.m.	IC	P-1
2:53 p.m.	IC	P-1
2:54 p.m.	IC	P-1
2:55 p.m.	IC	P-1
2:56 p.m.	IC	P-1
2:57 p.m.	IC	P-1
2:58 p.m.	IC	P-1
2:59 p.m.	IC	P-1
3:00 p.m.	IC	P-1
3:01 p.m.	IC	P-1
3:02 p.m.	IC	P-1
3:03 p.m.	IC	P-1
3:04 p.m.	IC	P-1
3:05 p.m.	IC	P-1
3:06 p.m.	IC	P-1
3:07 p.m.	IC	P-1
3:08 p.m.	IC	P-1
3:09 p.m.	IC	P-1
3:10 p.m.	IC	P-1
3:11 p.m.	IC	P-1
3:12 p.m.	IC	P-1
3:13 p.m.	IC	P-1
3:14 p.m.	IC	P-1
3:15 p.m.	IC	P-1
3:16 p.m.	IC	P-1
3:17 p.m.	IC	P-1
3:18 p.m.	IC	P-1
3:19 p.m.	IC	P-1
3:20 p.m.	IC	P-1
3:21 p.m.	IC	P-1
3:22 p.m.	IC	P-1
3:23 p.m.	IC	P-1
3:24 p.m.	IC	P-1
3:25 p.m.	IC	P-1
3:26 p.m.	IC	P-1
3:27 p.m.	IC	P-1
3:28 p.m.	IC	P-1
3:29 p.m.	IC	P-1
3:30 p.m.	IC	P-1
3:31 p.m.	IC	P-1
3:32 p.m.	IC	P-1
3:33 p.m.	IC	P-1
3:34 p.m.	IC	P-1
3:35 p.m.	IC	P-1
3:36 p.m.	IC	P-1
3:37 p.m.	IC	P-1
3:38 p.m.	IC	P-1
3:39 p.m.	IC	P-1
3:40 p.m.	IC	P-1
3:41 p.m.	IC	P-1
3:42 p.m.	IC	P-1
3:43 p.m.	IC	P-1
3:44 p.m.	IC	P-1
3:45 p.m.	IC	P-1
3:46 p.m.	IC	P-1
3:47 p.m.	IC	P-1
3:48 p.m.	IC	P-1
3:49 p.m.	IC	P-1
3:50 p.m.	IC	P-1
3:51 p.m.	IC	P-1
3:52 p.m.	IC	P-1
3:53 p.m.	IC	P-1
3:54 p.m.	IC	P-1
3:55 p.m.	IC	P-1
3:56 p.m.	IC	P-1
3:57 p.m.	IC	P-1
3:58 p.m.	IC	P-1
3:59 p.m.	IC	P-1
4:00 p.m.	IC	P-1
4:01 p.m.	IC	P-1
4:02 p.m.	IC	P-1
4:03 p.m.	IC	P-1
4:04 p.m.	IC	P-1
4:05 p.m.	IC	P-1
4:06 p.m.	IC	P-1

102-7 11/14, 11/14/71

11:13 a.m.	OG	P-2
11:15 a.m.	OG	P-2
11:18 a.m.	OG	P-2
11:20 a.m.	OG	P-2
11:22 a.m.	OG	P-1
11:23 a.m.	OG	P-2
11:25 a.m.	OG	P-2
11:28 a.m.	IC	P-1
11:30 a.m.	IC	P-1
11:32 a.m.	IC	P-1
11:37 a.m.	IC	P-1
11:41 a.m.	IC	P-1
11:57 a.m.	IC	P-1

11:50 a.m.	IC	P-1
12:02 p.m.	IC	P-1
12:04 p.m.	IC	P-1
12:06 p.m.	IC	P-1
12:30 p.m.	IC	P-1
12:37 p.m.	IC	P-1
12:42 p.m.	IC	P-1
12:45 p.m.	IC	P-1
12:47 p.m.	IC	P-1
12:48 p.m.	IC	P-1
12:57 p.m.	IC	P-1
12:55 p.m.	IC	P-1
12:53 p.m.	IC	P-1
12:59 p.m.	IC	P-1
1:01 p.m.	IC	P-1
1:05 p.m.	IC	P-1
1:06 p.m.	IC	P-1
1:08 p.m.	IC	P-1
1:10 p.m.	IC	P-1
1:35 p.m.	IC	P-1
1:42 p.m.	IC	P-1
2:02 p.m.	IC	P-1
2:05 p.m.	IC	P-1
2:07 p.m.	IC	P-1
3:06 p.m.	IC	P-1
3:13 p.m.	IC	P-1
3:15 p.m.	IC	P-1
3:25 p.m.	IC	P-1
3:37 p.m.	IC	P-1
3:50 p.m.	IC	P-1
3:54 p.m.	IC	P-1
3:59 p.m.	IC	P-1
4:00 p.m.	IC	P-1
4:02 p.m.	IC	P-1
4:03 p.m.	IC	P-1
4:04 p.m.	IC	P-1
4:05 p.m.	IC	P-1
4:06 p.m.	IC	P-1

ONLY COPY AVAILABLE

卷之三

卷之三

4:00 p.m.	EC	P-1
4:10 p.m.	EC	P-1
4:22 p.m.	EC	P-1
4:30 p.m.	EC	P-2
4:44 p.m.	EC	P-2
5:04 p.m.	EC	P-1
5:37 p.m.	EC	P-1
5:53 p.m.	EC	P-1

7:22	p.m.	IC	P-1
7:23	p.m.	IC	P-1
7:30	p.m.	IC	P-1
7:42	p.m.	IC	P-1
7:47	p.m.	IC	P-1
7:50	p.m.	IC	P-2
7:53	p.m.	IC	P-1
7:59	p.m.	IC	P-1
8:00	p.m.	IC	P-1
8:00	p.m.	IC	P-1

CCB 3/32 #24, 22/25/72

9:13	a.m.	CG	P-2
9:14	a.m.	CG	P-2
9:42	a.m.	IC	P-1
5:50	p.m.	IC	P-1
6:02	p.m.	IC	P-1
6:04	p.m.	IC	P-1
6:07	p.m.	CG	P-2
6:13	p.m.	CG	P-2
6:18	p.m.	CG	P-2
6:20	p.m.	CG	P-2
6:23	p.m.	CG	P-2
6:28	p.m.	CG	P-2
6:32	p.m.	IC	P-1
6:33	p.m.	CG	P-2
6:35	p.m.	CG	P-2
6:41	p.m.	IC	P-2
6:43	p.m.	IC	P-1
6:53	p.m.	IC	P-1
6:58	p.m.	IC	P-1
7:03	p.m.	IC	P-2
7:10	p.m.	IC	P-1
7:19	p.m.	IC	P-1

USDC/CT #14, 22/28/71

9:12 a.m. IC P-1
 9:32 a.m. IC P-1
 9:36 a.m. CG P-2
 11:07 a.m. IC P-3

INT R82-7

COL:cam

7

8:20 p.m. CG P-1
8:45 p.m. CG P-1
9:10 p.m. CG P-1
9:15 p.m. CG P-2

USDC/CT #14, 11/17/71

8:10 a.m. IC P-1
8:51 p.m. IC P-1
8:54 p.m. IC P-1

USDC/CT #14, 11/18/71

USDC/CT #15, 11/19/71

9:00 a.m. IC P-2
9:00 a.m. CG P-2

USDC/CT #15, 11/19/71

9:00 a.m. CG P-1
9:01 p.m. CG P-1
9:03 p.m. IC P-2
9:08 p.m. IC P-2

USDC/CT #15, 11/19/71

9:20 p.m. CG P-2

USDC/CT #15, 11/14/71

9:10 a.m. CG P-1
9:14 a.m. IC P-2
9:15 a.m. CG P-1

USDC/CT #15, 11/15/71

6:25 p.m. IC P-2
7:18 p.m. CG P-1
7:25 p.m. IC P-2
7:48 p.m. CG P-1
9:51 p.m. IC P-2

USDC/CT #15, 11/16/71

9:15 a.m. CG P-1
9:40 a.m. IC P-2
11:00 a.m. IC P-1
6:17 p.m. IC P-2

USDC/CT #15, 11/17/71

8:19 a.m. CG P-2
8:25 a.m. IC P-2
9:11 a.m. IC P-2

USDC/CT #15, 11/18/71

9:37 a.m. CG P-2

ME 102-7
HDL:sdm

1971/01/05 12:15/71

5:50 p.m. CG 2-1

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
VS. :
JOHN DOE :
:

RULING ON PENDING MOTIONS

On October 10, 1973, a Special Grand Jury was empanelled pursuant to 18 U.S.C. § 1955 to investigate organized crime activities, including gambling violations in this District. In connection with these proceedings, approximately thirty-four prospective witnesses appeared before the Special Grand Jury on October 10, 1973, and were requested to furnish voice exemplars, each refused to do so on constitutional grounds and several also relied upon various statutory rights. Upon their refusal, the witnesses were presented before the Court by the Government prosecutor who sought reenforcement of the subpoenas by Court order and, should the witnesses persist in their refusal to supply the requested exemplars, commitment for contempt.

Following what was then the most recent decision in point, In Re Schofield, ____ F. 2d ____ (3d Cir. 1973); 42 U.S.L.W. 2181, (Oct. 9, 1973), the Court directed the Government to supplement its request for a Court order, and

commitment if necessary, with supporting affidavits designed to make at least a preliminary showing that the material sought was relevant to an on-going investigation properly within the jurisdiction of the Special Grand Jury and that it was not sought for some other purpose. The Government complied with the Court's directive, submitting as to each witness a written motion for an order compelling the giving of a voice exemplar together with a supporting affidavit signed by the prosecuting attorney.

On November 12, 1973, a further hearing was held on the Government's motions. At that time counsel for the prospective witnesses moved to strike the prosecutor's affidavits, made offers of proof, and indicated an intention to examine the prosecutor and the Government agents involved, and to undertake a full scale inquiry as to the legality of each of the various wire taps employed during the investigations of their respective clients. Counsel further specifically objected to the giving of voice exemplars on the grounds that: (1) certain Government agents had already indicated their ability to identify certain of the witnesses in the pending wiretap investigations; (2) such voice exemplars might be used in cases where a prior indictment had been handed down; and (3) the subpoenas merely sought the "testimony" of the witnesses to whom they were directed and neither specifically sought, nor were broad to encompass, voice exemplars.

The Government relies on United States v. Dionisio, 410 U. S. 1 (1973), in support of its contention that the compelled production of voice exemplars solely for identification purposes neither violates witnesses' fifth amendment rights against self-incrimination, nor constitutes an unreasonable seizure under the fourth amendment. While Dionisio clearly supports the Government's position, the United States Supreme Court has even more recently bolstered the Government's stand by painting out with a rather broad brush the use of the exclusionary rule before the Grand Jury. United States v. Calandra, ____ U. S. ____ , 42 U.S.L.W. 4104 (Jan. 8, 1974). There the Court stated:

"Permitting witnesses to invoke the exclusionary rule before a grand jury would precipitate adjudication of issues hitherto reserved for the trial on the merits and would delay and disrupt grand jury proceedings. Suppression hearings would halt the orderly progress of an investigation and might necessitate extended litigation of issues only tangentially related to the grand jury's primary objective. The probable result would be 'protracted interruptions of grand jury proceedings.' Gelbard v. United States, 408 U. S. 41, 70 (1972). (WHITE, J., concurring), effectively transforming them into preliminary trials on the merits. In some cases the delay might be fatal to the enforcement of the criminal law." 42 U.S.L.W. 4107.

The present circumstances are clearly distinguishable from those in Gelbard v. United States, 408 U. S. 41 (1971), for here the interrogation of witnesses before the Grand Jury is not contemplated. Furthermore, the voice exemplars

which the Grand Jury seeks are plainly non-testimonial in character. While Title III of the Omnibus Crime Control Act bars from evidentiary use the contents and fruits of illegal interceptions and provides for the suppression of such evidence in various proceedings, the voice exemplars sought from these witnesses can hardly be characterized as "evidence derived" from an illegally intercepted communication within the meaning of 18 U.S.C. § 2515. Nor can those exemplars, or the questions which will form their basis fairly be said to have their origin in any illegal wiretap or interception.

Although the literal terms of the subpoenas command the witnesses to appear and give testimony, each witness is fully aware that only voice exemplars are requested. The Government has also represented in the supporting affidavits that the Grand Jury will request each witness to read an excerpt from the Declaration of Independence. The defendants, however, argue that since language on intercepted communications forms a central part, if not the essence, of the crimes under investigation, they have the right to invoke § 2515 as a defense in anticipated contempt proceedings under 18 U.S.C. § 1826(a). A fair appraisal of the facts and respective arguments of all parties demonstrates that the witnesses' contention lacks merit. The Government merely

seeks an order compelling the giving of a voice exemplar, a non-testimonial recitation of a passage from a totally innocuous document. The Court holds such evidence to be well outside the orbit of protection within which the witnesses seek to place it.

The petitioning witnesses' motions to dismiss or quash the subpoenas are denied. The witnesses' petitions to offer testimony and to interrogate the Government prosecutor and the federal agents participating in the investigation is also denied. The present Grand Jury proceeding has already been unduly delayed and its work would be made a shambles if further unreasonable delay were countenanced. Said witnesses shall appear at the next sitting of the Special Grand Jury at a convenient time and furnish the voice exemplars requested.

SO ORDERED.

Dated at Hartford, Connecticut, this 19th day of February, 1974.

T. Emmet Clarke /s/
T. Emmet Clarke
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : :

VS. : MISC. NO. H-64

JOHN DOE : FEBRUARY 27, 1974

NOTICE OF APPEAL

Notice is hereby given that Emil Sapere, defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment of contempt and order of commitment entered in this action on the 26th day of February 1974.

William P. Murray
Eagan, Jackson, O'Keefe & Murray
62 LaSalle Road
West Hartford, Connecticut 06107
203-521-7500
Attorney for Emil Sapere

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

IN RE: UNITED STATES OF AMERICA

Hartford, Connecticut

VB.

JOHN DOE

October 10, 1973

Before: HON. T. EMMET CLARKE, U.S.D.J.

Appearance:

PAUL E. COFFEY, ESQ.
Special Attorney
U.S. Department of Justice

Elliott Sperber
Official Court Reporter
United States District Court
District of Connecticut

1 MR. COFFEY: Good afternoon, your Honor.

2 Your Honor, this morning, as the Court knows,
3 a special grand jury was empanelled in this district,
4 and has been sitting for the remainder of the day. And
5 the grand jury has ordered voice exemplars to be given,
6 of a number of individuals.

7 The Foreman of the grand jury directed that
8 voice exemplars be given in a room in the United States
9 Attorney's office, to Federal Agents, who were designated
10 by the grand jury to conduct voice exemplars.

11 THE COURT: Was this in a case presumably
12 under investigation by the grand jury?

13 MR. COFFEY: That's correct, your Honor. And
14 there was a quorum present; 22 grand jurors were present.

15 A number of counsel are in court here today,
16 and I don't think it is contested that the grand jury
17 met with a quorum present, and that a number of
18 individuals have been directed by the grand jury to give
19 voice exemplars.

20 Now, I have a list of individuals who have
21 been so directed. And there are also attorneys here who
22 have advised their clients not to give the voice exemplars
23 until this Court has had an opportunity to rule.

24 I'm not quite sure of the most expeditious
25 way of handling this.

1 THE COURT: Do you have a list of the names,
2 so I can see them?

3 MR. COFFEY: I have a handwritten list, your
4 Honor, since I did not know which individuals were not
5 going to give exemplars, and which would.

6 THE COURT: How many are there?

7 MR. COFFEY: There are approximately 33, your
8 Honor. Not all are represented by counsel.

9 However, I have one group with respect to one
10 particular investigation, whose names I can give to the
11 Court. And they are all represented by counsel.

12 THE COURT: All right, let's see who they are.

13 MR. COFFEY: That is Mr. Vincent Consiglio,
14 Michael Chiarizio --

15 THE COURT: Let's go slower. I have got to
16 write these down.

17 Vincent Consiglio?

18 MR. COFFEY: Yes, your Honor.

19 THE COURT: Where is he from?

20 MR. COFFEY: From New Haven, your Honor.

21 THE COURT: All right.

22 MR. FAZZANO: I am Joseph Fazzano. I don't
23 know what standing I have at this point, but these
24 people are witnesses before a grand jury. And I note
25 that there are reporters present in the courtroom, and

1 the revelation of the names of the witnesses may be
2 detrimental to them, if publicity is given to their names
3 as being witnesses.

4 So far there are no defendants, and I think I
5 speak for all the counsel here, that the revelation of
6 these names ought to be done in writing, to prevent undue
7 publicity.

8 MR. COFFEY: I have no objection to that,
9 your Honor. Particularly with respect to those individuals
10 who are represented by counsel, I think we can succinctly
11 put on the record the grounds that the Government
12 suggests are required, as the basis for giving handwriting
13 -- sorry, voice exemplars. And the attorneys can argue
14 for the defense, whatever basis they have for suggesting
15 that there is no such grounds.

16 And then if the Court rules on the basis that
17 the exemplars should be given, I am sure that the
18 attorneys are competent to advise their clients whether
19 or not, pursuant to the Court's order, they should give
20 it or not. And I think we can proceed at that stage.

21 THE COURT: I presume you don't have a
22 transcript of the grand jury minutes at this time?

23 MR. COFFEY: I do not.

24 I don't think any attorneys for the defense
25 are prepared to contest my representation that each of

1 these individuals was directed by the Foreman to give
2 voice exemplars.

3 I was in the grand jury room, and I can
4 represent that.

5 MR. FLYNN: Your Honor, if your Honor please,
6 I don't think that is going to be the issue. But, the
7 transcript is going to be an essential matter for your
8 Honor to consider in this matter. I can assure the
9 Court of that.

10 MR. COFFEY: I think perhaps we should go
11 foward -- the transcripts are not available, since they
12 were only taken today, the actual testimony.

13 I would present to the Court my argument that
14 voice exemplars can be ordered by the Court today, and
15 I can do it very, very briefly. And if the defense has
16 some basis for convincing the Court that the transcripts
17 should be available, then perhaps we can proceed from
18 there.

19 THE COURT: All right, let's inquire, do you
20 have a better suggestion, counselor?

21 MR. FLYNN: Yes, I do, your Honor. I would
22 suggest that if the United States is determined that it
23 is not getting the response that it believes that it is
24 lawfully entitled to, that the procedure is for them to
25 file a petition with this Court, so that the Court does

1 not have to sit as a grand jury. The Court can then have
2 presented to it, and to counsel, for such purposes as are
3 essential to those conditions, those essential elements
4 of the grand jury proceeding, as is pertinent to this
5 particular subject matter.

6 And then the Court can perhaps listen to
7 selective argument from everyone.

8 Other than that, I respectfully suggest to
9 the Court that the Court is going to have to be sitting
10 as a grand jury. And, except for the fact that I might
11 be permitted to listen to whatever the question is, and
12 make whatever argument may be made, everybody else will
13 have to get out of the room; it is a secret proceeding.

14 THE COURT: Well, counselor, do I understand
15 correctly that it is a question of law on which you are
16 in dispute?

17 MR. FLYNN: I must respectfully suggest to
18 your Honor that it is both a question of law and of fact.

19 THE COURT: In what respect is it a question
20 of fact?

21 MR. FLYNN: First of all, that this procedure
22 is essential and necessary to the Government. With
23 respect to the interests that I represent, I can offer
24 affirmative testimony to the effect that it is not
25 essential and necessary with respect to my client, and

1 give the Court transcript of evidence taken in this
2 courtroom.

3 MR. FAZZANO: If your Honor please, I might
4 add to that, that the various witnesses find themselves
5 in a different status. Some of them are currently
6 defendants in other cases; others are actively being
7 involved in investigations in which the Government has
8 indicated its desire to go forward with the prosecution.
9 And others do not have those problems.

10 The Dionisio case, your Honor, to which I
11 think the Government will rely upon, and on which we will
12 rely, however, says that separate and distinct petitions
13 were filed by the Government, and that each made certain
14 allegations, and that was when the Court issued its order.

15 Now, speaking only for the clients that I
16 represent -- the two individuals who I represent --

17 THE COURT: What is your name, sir?

18 MR. FAZZANO: My name is Fazzano, your Honor.
19 And I represent two of the people who are on this list.
20 Their status may be vastly different. And the thing I
21 object to at this point is the en masse sort of treat-
22 ment, as if the argument pertaining to each and every
23 individual is in exactly the same manner. And it is not,
24 your Honor.

25 I respectfully suggest that we are entitled to,

1 as in Dionisio, to a petition filed by the Government for
2 each of these individuals. There are some -- they are
3 not represented at all, and who have been attempting to
4 consult with lawyers in the corridor, in a very haphazard
5 manner.

6 We don't know whether the Government alleges
7 the precise same set of facts applies to each individual,
8 or even en masse, and that would be my objection to
9 proceeding without a written notice as to what is required
10 of my clients to do.

11 THE COURT: Mr. Murray has an observation.

12 MR. MURRAY: Your Honor, I think in the first
13 instance, your Honor, counsel are concerned about the
14 procedure.

15 My client was subpoenaed to appear before a
16 grand jury. I now assume that I am before a Court, and
17 that this body is not sitting as a grand jury.

18 I think that if Mr. Coffey is attempting to
19 invoke the contempt powers of this Court -- and I believe
20 that is what he is attempting to do here -- that that
21 necessarily indicates that the individuals summoned
22 before the grand jury, within the scope of the contempt
23 power of this Court, are entitled as a matter of
24 fundamental fairness, under the Fifth Amendment, and
25 under the statutes of the contempt powers of the Court,

1 to notice.

2 And I think it is incumbent upon the United
3 States to set out in a petition to this Court what its
4 case is against these defendants, so that counsel may
5 have an opportunity to prepare.

6 I can assure the Court that, as brother counsel
7 has already indicated, the defendants here are in
8 different statuses. Some of them are under indictment
9 before this Court. There are aspects of the case that
10 involve my client -- one aspect that is on appeal to the
11 Second Circuit. So that I think, as a matter of orderly
12 procedure, and fundamental fairness, I would respectfully
13 contest the jurisdiction at this moment of this Court, on
14 the basis of fundamental fairness, and a due process
15 interpretation of the contempt powers of the Court.

16 I have a host of other arguments, if your
17 Honor pleases, with regard to the substance of this
18 matter. But, I think at the outset of the rules of the
19 game, so to speak, I don't think those rules are fair
20 at this point.

21 THE COURT: Does any other counsel want to be
22 heard?

23 MR. CURRY: I would like to be heard, if it
24 please the Court. I am David Curry, in behalf of the
25 witness Morton White, who received simply a subpoena

1 to give testimony.

2 Prior to today's proceeding the Government was
3 on notice of counsel's appearance in the case, yet there
4 was no notification -- again we are getting back to
5 fairness and equity -- no notification to counsel that
6 this proceeding would take this turn.

7 Now, there is plenty of time between perhaps
8 the end of last week and today for the Government to
9 notify counsel that the proceeding before the grand jury
10 would take this bizarre turn.

11 And, having the tapes now, in the midst of
12 the proceedings, is actually a device by ambush, which
13 I don't think this Court should entertain.

14 I am simply enlarging a little bit on the
15 scope of what has occurred thus far today.

16 THE COURT: Does any other counsel wish to
17 make an observation?

18 MR. COFFEY: May I be heard, your Honor?

19 THE COURT: What do you say, counselor, to
20 your adversary's observation -- let's suppose a man has
21 been indicted, and you are seeking supplementary
22 evidence to support an indictment already existing?

23 In other words, if -- I am just suggesting
24 this -- if your request is an attempt to garner or
25 gather further evidence against this particular defendant--

1 by way of illustration, academic illustration only --
2 don't you feel you have enough evidence on him now on
3 the pending charge, and then you bring him before the
4 grand jury to enhance the Government's position -- do
5 you feel that you would then, in that instance, be
6 entitled to require him to give further evidence?

7 MR. COFFEY: No, definitely not.

8 THE COURT: And if a matter were on appeal,
9 such as suggested by Mr. Murray -- I presume that it is
10 the Consiglio case, in which he represents not Mr.
11 Consiglio, but one of the associates in the case -- I
12 don't remember the name; is that the same name?

13 MR. MURRAY: I'm sure that your Honor is
14 familiar with that case, but what I was suggesting to
15 your Honor is -- that case is not what I was alluding
16 to in my oral argument a few moments ago.

17 What I am suggesting to the Court is that
18 disclosure with regard to certain wiretapping, as
19 affects my client, was denied by Judge Blumenfeld.
20 And that issue is on appeal.

21 My client is Mr. Sapere. It has nothing --
22 well, that was what I was alluding to, your Honor.

23 THE COURT: All right. I didn't know what
24 you were alluding to. That was the question. All right.

25 So, counselor, suppose you state your position,
and the Court will attempt to rule upon it.

1 MR. COFFEY: Right. The grand jury investiga-
2 tion which is the subject of this matter this afternoon,
3 does not relate to any pending indictment which is waiting
4 to be tried, or any case on appeal, except to the extent
5 that Mr. Murray indicated that he at one time had a motion
6 for disclosure which involved some wiretap evidence on a
7 case, and Judge Blumenfeld denied it. He appealed that
8 intermediate order.

9 But, with respect to those individuals who
10 perhaps are under indictment by this Court, it is not an
11 attempt by the grand jury, nor by the Government, to
12 secure additional evidence with respect to those indicted
13 offenses.

14 I recognize completely and fully that that is
15 not the purpose of the grand jury, nor can a grand jury
16 be used for that purpose.

17 Now, the United States vs. Dionisio, which I
18 know the Court is aware of, specifically stated that
19 voice exemplars can be compelled before a grand jury.
20 And that is that there is no ground under either the
21 Fourth or Fifth Amendment that a showing be made that
22 probable cause exists for the grand jury to call these
23 individuals -- nor under the Fifth Amendment, that the
24 particular exemplar is going to incriminate the particular
25 witness. The Supreme Court having held that the voices

1 are physical identification of an individual, to the
2 same extent as handwriting, fingerprinting and physical
3 appearances are.

4 Now, at the lower Court level, in Dionisio,
5 the Government, not sure that there was a Fourth Amendment
6 right to have the grand jury have probable cause before
7 it, gave a petition to the Court, setting out the nature --
8 I haven't seen those petitions -- but, setting out
9 basically why the exemplars were requested.

10 But, when the Supreme Court got the case,
11 after the petitions had been filed, and indicated that
12 there is no Fourth Amendment right in this area -- just
13 like fingerprinting. And if these individuals were called
14 in for fingerprinting, as opposed to a voice exemplar,
15 they'd have no stronger right to have a showing by a
16 petition by the Government that these fingerprints were
17 necessary. And the Supreme Court has equated both of
18 them.

19 This whole concept of the petitioners is a
20 delaying tactic by the defense, in order to avoid the
21 voice exemplar. And I rely on Dionisio. It is very
22 rare, if I may say so, that a Supreme Court decision is
23 so clear on what can be done before a grand jury, with
24 respect to physical identification. And it lays it right out.

1 The Foreman of the grand jury has directed
2 that the exemplars be given, and I think it is a clear
3 case of the Court having evidence in front of it, to
4 direct here and now that these individuals give the
5 exemplars.

6 I would also tell the Court that what we are
7 proposing to have the individuals read is a completely
8 innocuous statement, concerning the Declaration of
9 Independence -- which is very short, two paragraphs.
10 And, in addition to that, selected statements which
11 concern gambling, which the particular witness, the
12 grand jury, and the Federal authorities have reason to
13 believe were uttered by that particular witness during
14 the course of wire interceptions.

15 Our basis for having the Court declare that
16 that is not unreasonable or unconstitutional, is the
17 same basis that if a person were to be accused of a
18 bank robbery, and during the course of the bank robbery
19 said "Stick 'em up", or "Hand over the money", that
20 person can be made to stand in court, before a jury, and
21 utter those words, as a physical identification.

22 The voice exemplars, if the Court orders them
23 to be given, are not going to be used for their
24 substantive content, nor probative of the substantive
25 offenses which these individuals allegedly committed; it

1 is essentially for the purpose of identifying the
2 physical characteristics of those voices. And the Supreme
3 Court said on those bases the voice exemplars are
4 permissible, and there is no constitutional or statutory
5 right to have these particular exemplars prohibited.

6 And I strongly urge this Court that when
7 argument by the defense counsel is complete, to order
8 these exemplars this afternoon, or at the very latest
9 tomorrow morning, because we are ready to take them, and
10 all the equipment is set up on that basis.

11 THE COURT: Suppose, counselor -- I'd like to
12 get your observation, let's suppose -- well, as I
13 understand your representation, the exemplars are not to
14 compare against other wiretap recordings?

15 MR. COFFEY: Eventually they will be, yes,
16 your Honor.

17 THE COURT: Wiretap recordings that are
18 presently in existence?

19 MR. COFFEY: That's correct.

20 THE COURT: And have inventories of those
21 wiretap recordings been duly filed?

22 MR. COFFEY: Yes, they have, your Honor.

23 Now, these papers are under seal, of course.
24 The inventories are under seal with respect to each
25 individual who received them.

THE COURT: Who ordered these particular
wiretaps?

3 MR. COFFEY: In one case, Judge Murphy, and
4 there are a series of them, your Honor. On three other
5 occasions, Judge Blumenfeld, your Honor.

6 THE COURT: Now, suppose, let us suppose, for
7 example -- I don't know what transpired before this on
8 these wiretaps -- let's suppose for the purpose of
9 argument that the wiretaps themselves were illegal in
10 some respect. Is it your position that you would still
11 be entitled to procure these voice exemplars, to compare,
12 for your purposes, with the alleged illegal wiretaps?

MR. COFFEY: That's correct, your Honor.

Now, I might point out that Mr. Lasala is in
court. Mr. Lasala is an attorney who represents one
defendant, who sought Judge Newman's order to prevent an
individual from coming up before this particular grand
jury, for purposes of giving a voice exemplar. And if
I recall, and I can, accurately, what Judge Newman said,
that the voice exemplar itself is not any evidence of
the wiretap. The wiretap itself may be attacked at a
later time, or may be subject for attack at any time
with an appropriate motion.

24 But, the grand jury can call a person in to
25 give a voice exemplar for any reason, and that in and of

1 itself is an independent source of evidence, which the
2 grand jury can consider.

3 Now, if the Government for some reason has
4 illegal wiretaps, which we don't concede, at a later time,
5 when the Government purports to offer comparisons between
6 a voice exemplar and a wiretap, an appropriate attack can
7 be made by defense counsel at that time, that the under-
8 lying wiretap is illegal, and that resolves the question.

9 THE COURT: Suppose the grand jury, or under
10 your direction, decided to bring in the first precinct,
11 let us say, for voice exemplars, in the City of Hartford;
12 do you feel that there is any question as to whether or
13 not they could do that?

14 MR. COFFEY: Yes, your Honor. Under Davis vs.
15 Mississippi, just an over-broad witch-hunt, so to speak,
16 of people; bringing them in without any reason for bringing
17 them in, that would constitute an abuse of discretion by
18 the grand jury, or by the Federal Government.

19 THE COURT: Then we come to the next step --
20 that is what I wanted to set the stage for. So, without
21 a petition, setting up some basis for your approach to
22 X, Y and Z -- whoever the people are that are here --
23 without a petition setting up some reason or basis for
24 your seeking a voice exemplar, how does the Court know
25 that the prosecutor hasn't just, willy-nilly, decided to

1 bring in A, B and C, or X, Y and Z, and ask them for their
2 voice exemplars, for no good reason?

3 MR. COFFEY: I think the Court has to consider
4 that Dionisio was decided after Davis vs. Mississippi,
5 and it discussed Davis vs. Mississippi, and it went on to
6 say that, even knowing that Davis vs. Mississippi was on
7 the books, it stated that there is no need of showing of
8 probable cause to any degree, before an individual can be
9 called before the grand jury for the purposes of giving
10 a voice exemplar.

11 And I object to a petition on a number of
12 reasons, not the least of which is that Dionisio does not
13 require it, and that is the applicable law on this
14 situation.

15 But, if the Government files a petition,
16 undoubtedly we are going to get into a long struggle as
17 to the sufficiency of that petition, and evidentiary
18 matters with respect to whether or not that petition is
19 valid, to call a particular individual. And that is not
20 anticipated by Dionisio.

21 In fact, as I read that case, it is to avoid
22 legal maneuvers or unfounded legal maneuvers by a
23 defendant, to fight a voice exemplar, when in fact he can
24 be required to give it, if in fact it is a physical
25 characteristic.

1 THE COURT: Wouldn't the Court be in a better
2 position to rule on each of these issues, even though it
3 is a little cumbersome -- it might take a little more
4 time, but, wouldn't it be in a better position to act
5 upon them, and assuming it acted as you request, which
6 means if the Court orders it, and then if they don't do
7 it they are going to go to jail until they do it -- make
8 no mistake about that, provided the Court orders it.
9 But, before the Court orders it, it wants to be sure it
10 is right.

11 Wouldn't it be much better if your office set
12 up a petition, let's say for certain information or
13 conversation -- you know what you got -- and whether it
14 is probable cause or not, that is not in issue -- I think
15 probably your observation is correct, the Supreme Court
16 said probable cause does not have to be shown, as such --
17 but, at least some related reason for having X, Y or Z
18 come in here and be presented before a grand jury, and
19 put to the test, and the inconvenience or embarrassment,
20 or otherwise, of having to give a voice exemplar. Then
21 we could be certain that we wouldn't be caught in that
22 net of Davis vs. Mississippi, which you quoted.

23 So, we wouldn't be caught in the net of being
24 careless in our sweep, in gathering or attempting to
25 gather evidence.

1 Then you have some basis for saying well, we
2 got this, and there is cause to believe -- whether it is
3 good cause or not -- there is cause to believe by the
4 prosecutor that this may be X, Y or Z. And we want X's
5 voice exemplar.

6 If you come in with such a petition, on that
7 basis, the Court would give very careful consideration to
8 it.

9 MR. COFFEY: May I read from Dionisio, your
10 Honor? The case involved 20 subpoenas for voice exemplars,
11 not just Mr. Dionisio, but 20.

12 The Court said "The Court of Appeals found
13 critical significance in the fact that the grand jury had
14 summoned approximately 20 witnesses to furnish voice
15 exemplars. We think that fact is basically irrelevant to
16 the constitutional issues here. The grand jury may have
17 been attempting to identify a number of voices on the
18 tapes in evidence, or it might have summoned 20 witnesses
19 in an effort to identify one voice. But, whatever the
20 case, a grand jury investigation is not fully carried out
21 until every available clue has been run down, and all
22 witnesses examined in every proper way to find if a crime
23 has been committed."

24 Then it goes on to say and discuss the fact
25 that the grand jury investigations are necessarily broad.

1 That is the language it uses: "The grand jury may well
2 find it desirable to call numerous witnesses in the
3 course of investigation. It does not follow that each
4 witness may resist a subpoena on the ground that too
5 many witnesses have been called."

6 Now, the whole direction of the Dionisio case
7 is that if a grand jury is validly sitting, and has a
8 valid purpose for calling these individuals, it should be
9 allowed to run its course. That is the traditional
10 aspect of the grand jury.

11 THE COURT: How does the Court have before it
12 anything significant, that there is a valid purpose for
13 calling them, except you say, well, you want them?

14 If I had something in the way of a petition,
15 or an excerpt from the grand jury minutes as to what
16 happened, then there would be something definite. And if
17 there is reason there, you may be sure the Court will
18 order it, without any question. And the penalty would be
19 confinement until it is performed.

20 But, I think the idea -- because contempt is
21 such a strong and such an awesome thing, to put someone
22 in jail because they refuse to do something, I think it
23 ought to be spelled out in black and white, what you are
24 representing. And then they are told. And if they don't
25 want to do it then, then they know what the consequence is.

1 It is like the boy who jumped off the wall,
2 and he hit the sidewalk: his feet are going to sting.
3 It is just as sure as that.

4 But, let's make the rules in fact so certain,
5 that he knows what is going to happen -- once he makes
6 the jump, so to speak.

7 MR. COFFEY: Well, I would do it, if the Court
8 so requests.

9 THE COURT: I think it is the better procedure,
10 counselor. I know it is more cumbersome. It is going to
11 delay you; it is more awkward, and a lot more work
12 involved, and all of these people have all got to come
13 back another day, and go through the same procedure.

14 But, they have their day in court, and we have
15 their argument, and it is better procedure to have
16 something tangible, as to each of these individuals from
17 whom you are seeking this voice exemplar.

18 I think they know the Court's position pretty
19 much from my statement here now, if there is some basis
20 for it, that that is going to be the result.

21 MR. COFFEY: I am concerned, your Honor, that
22 in an indirect way the Court is saying, without saying,
23 that there may be a Fourth Amendment claim here. Because,
24 if probable cause need not be shown, then significance
25 need not be shown. Either the grand jury has the power

1 or not the power.

2 It is on that basis that I am reluctant. I
3 am prepared, however, to do it at ten o'clock tomorrow
4 morning. The grand jury is meeting tomorrow.

5 THE COURT: Set up in your petition the valid
6 cause that they are seeking, what they are seeking out.
7 And the use they propose to use it for, and the names of
8 the parties, and preferably an excerpt of their refusal
9 before the grand jury. And then the Court will act.

10 MR. COFFEY: All right. With respect to the
11 excerpt of the grand jury minutes, if they refuse, I
12 would like to request at least of counsel who are here,
13 whether that is going to be necessary. Almost all of
14 them instructed their clients not to.

15 THE COURT: If they are willing to stipulate
16 that it isn't necessary, that is the only concern that I
17 have. If they want to agree, fine. If not, you will
18 have to get your stenographer to work tonight, and get
19 it out.

20 MR. MURRAY: In behalf of my client, I am
21 interested in fair play, and I am certainly prepared to
22 indicate to the Court that under my instructions he
23 refused certain responses.

24 However, in the context of wanting fair play,
25 and not in an attempt to delay this Court, or harass

1 this Court, I would like an opportunity to study the
2 Government's petition, or the petition that is forth-
3 coming, as is required by the Dionisio case. And to have
4 that opportunity, after the Government has filed it.

5 THE COURT: Well, it won't take long for you
6 to study it. I think the petition also should include
7 in it what you are asking them to read, and what particular
8 words that there are, the special quotations that you are
9 asking them to recite before the grand jury. That should
10 be included in your petition.

11 Because, that probably will be argued.

12 MR. MURRAY: Is your Honor suggesting to the
13 Government that the origin of that verbiage be contained
14 in the petition?

15 THE COURT: Not necessarily, no.

16 MR. FLYNN: Your Honor, I wonder if I might
17 raise another problem? Your Honor asked the question of
18 the Government somewhat earlier as to whether or not
19 there has been an inventory made, and whether or not
20 there has been notice served in accordance with the
21 statute.

22 I think this proceeding under that same
23 statute should be at least a proceeding, if not a
24 hearing. And it is my recollection of 2518 that the
25 subject matter has to be served on the accused, on the

1 subject, on the individual, ten days before.

2 I don't want the Government to go through
3 undue problems, to be dilatory, because they can't find
4 my client. I'm sure I can consent to accept service in
5 writing, and my client will consent to that, so that both
6 this Court and Mr. Coffey won't have any concern in that
7 regard.

8 But, I don't want to have the Government be
9 unaware that if we come to the Court with a petition,
10 and there is a statutory requirement that they have not
11 complied with, that I am going to waive it. I'm in no
12 position to do any such thing.

13 THE COURT: I think your adversary's position
14 is the legality of the wiretap that Judge Newman
15 purportedly ruled on is not in evidence.

16 MR. FLYNN: I'm not suggesting it is, your
17 Honor; I'm suggesting that this has nothing to do with
18 the legality of the wiretap.

19 THE COURT: Very good.

20 MR. FLYNN: It has to do with the conduct of a
21 proceeding. And I don't think Mr. Coffey made any cloak
22 of this fact -- it is predicated upon the existence of
23 what he said was four wiretaps.

24 MR. MURRAY: Your Honor, I usually adopt Mr.
25 Flynn's argument, but I won't in that regard.

1 MR. LASALA: Your Honor, I am Attorney
2 Lasala from New Haven, the counsel who Mr. Coffey made
3 mention of earlier in his remarks.

4 One of the witnesses whom I represent here
5 today, under my representation, has filed a motion to
6 suppress in the United States District Court, in the form
7 of a pre-indictment motion for seizure that was taken.
8 And the motion to suppress attacks the affidavit which
9 we claim was based upon conclusions drawn by the Federal
10 agents.

11 THE COURT: What affidavit is that, counselor?

12 MR. LASALA: This is the affidavit for a
13 search and seizure warrant, pursuant to an intercepted
14 communication.

15 So, if your Honor please, this matter is
16 presently pending before Judge Newman, and Mr. Coffey and
17 I were back there last Friday, at which time I registered
18 objection to the witness whom I represent appearing here,
19 because of the fact that Judge Newman still has this
20 motion under consideration.

21 As a matter of fact, our brief was filed
22 yesterday. And the Government is to file its brief next
23 week, seven days hence.

24 And, Mr. Coffey is absolutely correct; he did
25 represent before Judge Newman that a voice exemplar would

1 be requested. Now, I'm familiar with the Dionisio case,
2 and the fact of the matter is, what is a voice exemplar?

3 When we get into the business of intercepted
4 communications, then I think we have to adhere to the
5 fact, 2518, which, as Mr. Flynn points out, specifically
6 states: "The contents of any intercepted wire or oral
7 communication or evidence derived therefrom shall not be
8 received in evidence, or otherwise disclosed in any trial,
9 hearing, or other proceeding in a Federal or State Court,
10 unless each party, not less than ten days before the
11 trial, hearing, or proceeding" -- certainly a grand jury
12 is a proceeding -- "has been furnished with a copy of the
13 Court order."

14 Now, if a voice exemplar consists of Mary had
15 a little lamb, I guess that is one thing. But, if there
16 is, in fact, an intercepted communication which has been
17 reduced to writing, and which the witness is asked to
18 recite from, then I think we have a different situation,
19 which I know was included in the Dionisio case by dictum.

20 But, I think that there is really a problem
21 here, particularly in light of the fact that Judge Newman
22 has not ruled upon our motion to suppress, which would
23 make this academic at this point.

24 So, I think that insofar as my situation, and
25 the representation of this one witness is concerned, it

1 is a problem.

2 Your Honor did address himself to this
3 inventory, the 90 day requirement, and I would succinctly
4 state for the record -- and I know Mr. Coffey is aware of
5 this -- that this is one of the major claims we are making
6 in our motion to suppress, that there has been no
7 compliance with the inventory regulation, the 90 days,
8 which is a question of fact or of law that Judge Newman,
9 I realize, has to determine.

10 But, at this particular juncture I think our
11 position is laden with problems on that basis, and my
12 failure to be able to understand what forum the United
13 States Supreme Court is talking about when it talks
14 about voice exemplars; what it means, that is quite
15 another matter.

16 I see a head-on confrontation between this
17 voice exemplar from a transcript derived from an inter-
18 cepted communication and identity features only.

19 I think we are doing by the back door what we
20 can't do by the front door. So, I respectfully take
21 exception.

22 THE COURT: All right. I will ask Mr. Coffey,
23 if Judge Newman suppresses -- I say if he suppresses this
24 alleged wiretap of counsel's client -- whoever he may be --
25 would your position in this case be the same?

1 MR. COFFEY: Yes, your Honor. What is before
2 the Court, Judge Newman, is the search which was conducted
3 and attacked by Mr. Lasala, that the affidavit in support
4 of the search did not contain probable cause.

5 But, I point out that the Court -- which I
6 think is important -- Judge Newman, after all those
7 arguments, informed both counsel that that is another
8 matter entirely.

9 But, that does not mean that the grand jury
10 cannot subpoena Mr. Lasala's client for the purpose of
11 giving a voice exemplar.

12 THE COURT: What would you have it compared
13 with?

14 MR. LASALA: That's the point.

15 MR. COFFEY: It is going to be compared with
16 an innocuous paragraph, which I indicated then were
17 several statements which will ostensibly -- when I say
18 "ostensibly", they will talk about placing wagers, or
19 placing bets.

20 THE COURT: That came from this wiretap?

21 MR. COFFEY: That's correct, your Honor.
22 However, that is not use of that evidence before the
23 grand jury; it is not use until the exemplar is taken
24 back to the grand jury and given to them for their
25 consideration.

1 THE COURT: That is one of the reasons I think
2 that these should be submitted on petitions, so that the
3 Court can make a distinction in his case, as against Mr.
4 Murray's or Mr. Flynn's case.

5 In other words, until Judge Newman rules --
6 it might be a little different situation to his case; I
7 don't say there is, but there could be, than to some
8 other. And there may be some other distinctions.

9 So, I think if you have the petition, and the
10 Court can make the comparisons, and see your justification
11 for acting -- the law is there -- the Dionisio case is
12 pretty clear, provided these same preliminaries are
13 shown first on the petition, then the Court can act.

14 Was there someone else who wanted to be heard?

15 MR. MURRAY: Well, your Honor, I am awaiting
16 the Second Circuit's decision on disclosure. I assume
17 Mr. Coffey wanted the voice prints -- of course since I
18 received the inventory notice in my mailbox, in my
19 client's mailbox, with regard to what has been happening
20 while my client was under indictment, I didn't seem to
21 get the papers.

22 THE COURT: Why don't we ask the simple
23 question: counsel for the Government, would the voice
24 exemplar in the case of Mr. Murray's client, would that
25 be used in the case that is presently pending?

1 MR. COFFEY: No, absolutely not, your Honor.
2 I'm well aware of the fact that it cannot be used in any
3 pending case.

4 MR. FAZZANO: That is precisely our point.
5 Until we have a petition -- I have a client who is
6 presently under investigation, and the United States
7 Government has now said it intends to proceed toward an
8 indictment.

9 It seems to me, your Honor, we are entitled to
10 have some statement, not in an en masse fashion toward
11 everybody, but I should have something upon which I can
12 base my judgment, also.

13 Your Honor, I would like to ask a question of
14 the court. There are people here who are unrepresented
15 today, and we are speaking as if we -- I am speaking for
16 my colleagues, as if we represented them all, which we
17 do not.

18 I hope that your Honor will direct the United
19 States attorney to serve notice upon these people in
20 these petitions, if your Honor so rules at the end of
21 this argument, so that each of them may consult with
22 their own lawyers. Because, I do think there is some
23 confusion, since they have informally consulted us in
24 the corridors. And I would not want them to feel that
25 they are in any way protected by what is being said here

1 today.

2 MR. LASALA: Your Honor, as a matter of simple
3 logistics, not to belabor this, but to take your Honor
4 back momentarily to Judge Newman's remarks last Friday --
5 and I am certain that Mr. Coffey will agree with me --
6 Judge Newman did not quash the subpoena. And, bearing in
7 mind that a grand jury can ask for a voice exemplar, I
8 think the Dionisio case is clear on that, but, on the
9 other hand, Judge Newman made no representation insofar
10 as to what that voice exemplar was to be.

11 This is where we reach step 2. It becomes a
12 crucial problem at this juncture. This is the major
13 reason on behalf of the witness, the one particular
14 witness that I represent, that I take issue with.

15 THE COURT: Very well.

16 MR. COFFEY: Your Honor, I still hope to get
17 the petition tomorrow, but if we are talking about 30 or
18 40 individual petitions, and a transcription of grand
19 jury notes, it is going to take me at least a day.

20 Now, the grand jury will be back on Friday.

21 THE COURT: The 19th? Or Friday this week?

22 MR. COFFEY: Friday this week. And I would
23 request at that time that the individuals under subpoena
24 be ordered by the Court, if they are sitting in the
25 courtroom, that they have a responsibility to be back in

1 this court on Friday, at which time the Court can
2 hopefully decide whether the Government's request of
3 voice exemplars should be granted.

4 THE COURT: We have this problem, counselor:
5 this is going to take a little time. On the 19th we have
6 got two naturalization sessions. There are 80 people in
7 the morning and 80 in the afternoon. And you add to that
8 that there are four hearings on the motion for injunction
9 of the Getty Oil, and the Mobil Oil, and the Shell Oil,
10 and a few more -- there is a limit to what the Court can
11 do in one day. And I don't think we could handle all
12 that business in one day; it is impossible.

13 So, Friday is pretty well booked up. I use
14 that term cautiously, not suggestively.

15 MR. COFFEY: Let me request -- I certainly
16 don't think this is unfair, if all counsel are present
17 now -- I'm only aware of one or two counsel who have
18 entered an official appearance for any particular client,
19 at which time it would be very difficult for me to file
20 my petition on this -- if all counsel will agree to file,
21 or I think they should be ordered to file appearances,
22 for whatever clients they wish to represent in this
23 matter, and I would draft the petition, and serve it on
24 defense counsel, and serve the petition on those
25 individuals who are not represented by counsel, or who

1 secure counsel in the interim, and then we could make an
2 attempt to schedule this before the Court at the next
3 grand jury session.

4 THE COURT: How many have counsel, do you know?

5 MR. COFFEY: Yes, I know approximately, your
6 Honor. I would say two-thirds have counsel.

7 THE COURT: Two-thirds of the 30; is that it?

8 MR. COFFEY: Two-thirds of 33, I will say,
9 have counsel.

10 THE COURT: Well, will counsel of those two-
11 thirds -- are they willing to file appearances, so they
12 will expedite Mr. Coffey's petition?

13 MR. MURRAY: Yes, your Honor.

14 MR. LASALA: I so represent.

15 MR. FAZZANO: Yes.

16 MR. FLYNN: If this is a civil case, your
17 Honor -- I'm not joking -- I understand it is a civil
18 contempt proceeding that Mr. Coffey is going to seek.
19 If he wants me to file an appearance in a criminal case,
20 I am at a loss as to who I file it with. If it is a
21 civil case, I agree.

22 THE COURT: It is a civil contempt proceeding.
23 It is one of those where you hold the keys to the
24 jailhouse.

25 MR. FLYNN: I don't hold the keys, your Honor.

1 THE COURT: Now, as to those others who don't
2 have counsel, how do you propose to serve them, counselor?
3 Say the ten of those, roughly; is that right?

4 MR. COFFEY: Yes. We have their addresses,
5 your Honor, and we will serve them with a petition
6 personally.

7 THE COURT: You have the addresses of all of
8 them?

9 MR. COFFEY: Yes.

10 THE COURT: Those persons who are served
11 personally by the Government attorney should, on the date
12 of the summons to which it is returned, should be here
13 with their attorneys, their own attorneys. And if you
14 don't have an attorney, and can't afford one -- that is
15 an important question, and can't afford one -- then the
16 Court will then appoint the Public Defender to represent
17 you.

18 But, if you have funds with which to retain
19 an attorney, of course you should come with your own
20 counsel.

21 Is that clear?

22 Now, the Public Defender's office, of course,
23 is on the second floor here, near the elevator. I'm
24 sure you won't have any trouble inquiring from anyone,
25 if you need counsel.

1 But, it is only for those who can't afford
2 counsel.

3 Is there any question by those who are not
4 presently represented?

5 Very well.

6 MR. COFFEY: Your Honor, I think it should be
7 stated in open court that if it is possible for any of
8 these individuals to secure counsel prior to the petition
9 being served, it benefits that individual. It means that
10 he or she has representation at the earliest possible
11 time.

12 THE COURT: That is true. I am going to ask
13 the Clerk, when is the next open date, Mr. Clerk, that
14 we can set this down for?

15 THE CLERK: You have a trial commencing on the
16 23rd, your Honor. The 29th is an open date. You have no
17 calendar at that time.

18 THE COURT: Is that agreeable, the 29th?

19 MR. COFFEY: That is a Monday, your Honor?

20 THE COURT: Monday, the 29th at two o'clock.

21 MR. FLYNN: The 29th of this month, your Honor?

22 MR. MOYNIHAN: Your Honor, I am Attorney
23 Moynihan. Just a point of clarification, I was wondering,
24 did your Honor's direction to Mr. Coffey, to provide
25 counsel with the petitions in question, include the

1 direction to accompany that petition, or include within
2 that petition, the transcript which he expects to request
3 the defendants to read, or the contents of that transcript?

4 As I understood it, the Court made that
5 direction. I want to make sure that I or Mr. Coffey
6 understand it correctly.

7 THE COURT: I would think in the petition,
8 when Mr. X is before the grand jury, that part where he
9 was requested to do something, and he said "No, on the
10 advice of counsel I decline to carry out your request",
11 I think that should be included in his petition.

12 MR. MOYNIHAN: I was specifically inquiring,
13 your Honor, as to the contents of the transcript that is
14 going to be provided to the witness before the grand jury,
15 at some later date, and that witness is asked to read
16 from; will the contents of this document be required in
17 the petition?

18 THE COURT: I would suggest that that be
19 included in the petition.

20 MR. MOYNIHAN: Yes, your Honor.

21 THE COURT: It should be spelled out
22 specifically what is expected. And then there can be
23 no concern, if it goes before an Appellate Review Court,
24 and they will know specifically what has been requested,
25 and what has been reviewed.

1 Is there anything further, gentlemen?

2 MR. MURRAY: Thank you, your Honor.

3 THE COURT: Adjourn court, Mr. Bailiff.

4 (Whereupon the hearing was concluded.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: UNITED STATES OF AMERICA

Hartford, Connecticut

October 10, 1973

JOHN DOE

* * * * *

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript of my stenographic notes in the above entitled cause on October 10, 1973.

Elliott Fisher

I hereby certify that two copies have been hand-delivered to the U.S. Attorney's office on 3/13/74.

Frank J. Raccio

